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Protecting Abused Migrants and Reuniting with Undeclared Dependents

Immigration Minister Ahmed Hussen announced earlier this month some significant changes to Canada's immigration policy that are meant to protect vulnerable workers and abused spouses, as well as to allow reunification with previously-barred dependents.

Open work permits for vulnerable workers

The first policy change which took effect on 4 June 2019, provided for the urgent issuance of open work permits (OWP) to abused workers who still have valid status in Canada (i.e. on valid employer-specific work permits or on implied status because they are waiting for the decision on renewal applications).

To qualify for an OWP under the policy, the applicant must provide evidence of "reasonable grounds to believe that they are victims of physical, psychological, sexual or financial abuse from their employers," according to the press release from Immigration, Refugees and Citizenship Canada (IRCC).

The applicant worker must submit the application for an OWP online, except in cases where the applicant is unable to do so due to a disability. If an online application cannot be made, the worker must apply in person at an IRCC office.

On its face, this policy appears to be commendable. It is a valuable legal remedy for those who still have valid temporary worker status but are tied to a specific employer by their work permits. Often, these workers are very reluctant to complain to, or against, their employer for fear of being fired from their jobs or losing their chance at obtaining a work permit renewal or eventual permanent resident status.

However, this policy change has serious limitations and does not go far enough to protect the most vulnerable workers. First, the evidence required to prove abuse can be quite subjective and not always easy to obtain. Second, it excludes those who have already lost their temporary resident status in Canada who are in fact the ones most exploited by employers since they face a more imminent threat of deportation.

Thus, it would have been much more effective in reducing, if not eliminating abuse, if all workers, especially the more vulnerable low-wage foreign workers, are granted open work permits or permanent residence at the outset.

Open work permits for abused spouses

Under this policy change which is scheduled to take effect on 26 July 2019, abused spouses or partners may apply for an expedited "fee-exempt temporary resident permit" (TRP). If the TRP is granted, the applicant will also be entitled to the issuance of an open work permit.

Unlike the new policy which allows abused workers to apply for an open work permit, there is no requirement that the abused spouse or partner must have valid temporary resident status in Canada. Instead, it applies to any foreign national in Canada whose status in Canada is "dependent on their abusive spouse or partner". This would include those who are applying for permanent residence as sponsored spouses, or are accompanying dependents in their spouse's permanent residence application.

Aside from the possible issuance of TRPs and OWPs, abused spouses or partners who will apply for permanent residence on humanitarian and compassionate grounds may benefit from expedited processing of their PR applications if they are "in urgent situations of family violence."

This policy change is also commendable as it recognizes that family violence is unacceptable and that immigration status cannot be used as a shield for wrongdoing. Unfortunately however, family violence is a complex issue hence it remains to be seen whether this remedy will be effectively used by those affected or applied fairly by immigration officers.

Pilot project for prospective sponsors affected by R117(9)d

The third and perhaps most significant policy change involves the implementation of the controversial (owing to its often harsh consequences), section 117(9)d of the Immigration and Refugee Protection Regulations.

Section 117(9)d provides that if a person failed to declare an immediate family member in their own permanent residence application, the undeclared family member can never be sponsored for permanent residence under the family class by the non-declarant.

Many prospective sponsors have been shocked to learn of the harsh impact of section 117(9)d, especially if the non-disclosure was inadvertent or was based on erroneous advice. Since this provision had resulted in countless families being unable to reunite in Canada, there had long been a clamor for the repeal of section 117(9)d.

Instead of repealing the controversial provision for now, the government announced a two-year pilot project that will begin on 9 September 2019 (and end on 9 September 2021), which will allow at least two classes of immigrants to sponsor their previously undeclared dependents: refugees and sponsored family members.

Again, while the pilot project did not go far enough to include all classes of permanent residents, it is a significant first step that will hopefully lead to a more encompassing repeal of section 117(9)d and other similarly harsh provisions in the IRPA and its Regulations.

This article is meant for information purposes only and not as specific legal advice. Each case is unique and is best discussed in detail with a qualified, experienced and trusted immigration legal advisor to increase the chances of success.

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